

Rowe, W
1970

Mr. Wyndell A. Rowe
204 West Hiawatha Trail
Mt. Prospect, Illinois 60057

Dear Mr. Rowe:

Upon receipt of your letter of April 20, 1970, I examined our record of the events which you had outlined in your correspondence.

The purpose of informal conferences is to provide an opportunity to reach a settlement with the taxpayer without the necessity of a formal hearing. We do have a heavy backlog of hearings scheduled and consequently, delays will occur. If a settlement cannot be reached, the taxpayer, as in your situation, can demand a formal hearing as a matter of right.

In fairness to your case, the Department suspended collection of the assessment during the years that this hearing was pending. In some cases, the taxpayer elects to deposit the amount of the assessment, in order to avoid the additional interest charges that may accrue, without prejudice to his case. In the event a refund is later issued, the taxpayer is entitled to interest on the refund.

I have confirmed the fact that the series of conferences which were held during the year 1965 did not result in any agreement between your representative and this Department. However, the decision of the Commission includes a reduction in the original assessment based upon information supplied at that time by your representative.

- two -

In the interests of justice and fair play, a considerable amount of thought and attention was given to the details of your case prior to the drafting of the decision.

I cannot, therefore, find any meritorious reason to reopen this matter, and the case must be considered closed on the basis of the decision of the Commission.

Sincerely yours,

EDWARD ROOK
Secretary to the
State Tax Commission

April 28, 1970

ln:jlw

KRAFT FOODS
500 PESHTIGO COURT
CHICAGO, ILLINOIS 60690

W. A. Rowe

NICK ROWE

April 20, 1970

Mr. Edward Rook
Secretary to Commission
State of New York
Department of Taxation and Finance
State Campus
Albany, New York 12226

Dear Mr. Rook:

I certainly appreciate your taking the time to discuss the tax problem I have with the state of New York. As I discussed on the telephone, this has been the most frustrating experience I've had and without doubt the most ludicrous situation I've ever encountered.

This has been going on for almost ten years; for your convenience I have attached the key correspondence involved which I would appreciate you reviewing. The top letter spells out the chronological order or sequence and I believe it and the remainder of the file are self-explanatory. As I've mentioned, I'm most anxious to have this matter settled and will appreciate anything you can do to help.

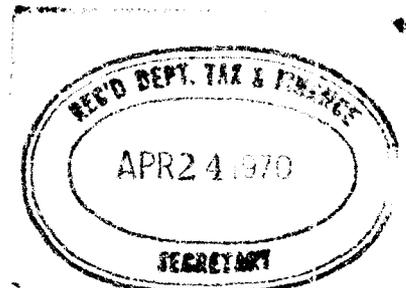
Respectfully yours,

W. A. Rowe

W. A. Rowe

WAR/jz

Att.





STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BENJAMIN B. BERINSTEIN
REGIONAL TAX SUPERVISOR

PAUL NEWMAN
DISTRICT TAX SUPERVISOR

STATE TAX COMMISSION

JOSEPH H. MURPHY, PRESIDENT
IRA J. PALESTIN
JAMES R. MACDUFF

NEW YORK DISTRICT OFFICE
INCOME TAX SECTION
80 CENTRE ST.
NEW YORK, N. Y. 10013
CORTLANDT 7-9800

ADDRESS YOUR REPLY TO
Room 781
Ext. 7029

Wyndell A. and Hazel N. Rowe
204 West Hiawatha Trail
Mt. Prospect, Illinois 60057

July 2, 1965

Re: Taxable Year 1961

Dear Sir and Madam:

A conference on the above matter will be held at this office,
80 Centre Street, New York, N. Y., Room 781 on July 22, 1965 at
2:00 p. m.

Please use the enclosed envelope in acknowledging promptly your
receipt of this notice.

You should be prepared to submit the data and information necessary
to show that additional taxes have been erroneously determined,
or that a refund is due as claimed.

Very truly yours,

STATE TAX COMMISSION

By *David Simon*
David Simon
Tax Administrative Supervisor

ds-ph
enc.

cc: Claude N. Hoke
15 Fairmount Blvd.
Garden City, N. Y. 11530

204 West Hiawatha Trail
Mt. Prospect, Illinois
April 5, 1965

Mr. Claude N. Hoke
15 Fairmont Boulevard
Garden City, New York 11530

Dear Mr. Hoke:

For the preparation of my 1961 report to the New York State Revenue Service I maintained a worksheet recording my daily activity. At the end of the year working from that sheet, expense reports, memos and notes, I documented my travel schedule and itinerary for the current year. The recap from that constituted my report as to number of days worked in New York State and number of days worked out of the state.

I have attached typed copies of the detailed report from which the recap was summarized. Each day is itemized showing the area worked during each day, other than those days that I was in New York City. I have left the identification blank for those days, and you may assume any blanks reflect days worked in the office.

If I understood you correctly, this is the information the state has requested you provide in my behalf. I trust this will suffice - surely complete substantiation or proof is not required. Possibly some types of work or some jobs are of a nature that the evidence can be provided of each day's activity, but in my case it's an impossibility. As you are aware, my position as Operation's Manager did not have a set or routine schedule of travel. I necessarily worked wherever we had operational problems and rarely had an advance itinerary for over a week.

I do have copies of my 1961 company expense reports, which support some days out of state but not nearly all. As you are also aware, much of my time was spent working surrounding areas which could be reached by car from my residence. Many of those trips were made either with someone driving a company automobile or my driving a company automobile. No company expenses were incurred on many of those trips and, of course, expense accounts were not submitted. Our Hillside operation, which as you know is one of our major operations, is a typical example. I made many trips to Hillside and no company expenses were incurred, and as a result expense vouchers were not prepared.

Please submit the attached, along with my comments in this letter, to the state. I'm also attaching the 1961 expense vouchers which indicate the trips during which company money was expended. These, of course, also indicate both out-of-state and in-state expenditures.

I sincerely hope this will close the matter; however, if there is any further information requested, please advise.

Very truly yours,

WAR/dm

W. A. Rowe



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JOSEPH H. MURPHY, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE CAMPUS
ALBANY, N. Y. 12226

TELEPHONE 457-2655, 6, 7

ADDRESS COMMUNICATIONS TO
HEARING OFFICER

STATE TAX COMMISSION

In the Matter of the Petition

of

WYNDELL A. & HAZEL N. ROWE

for a Redetermination of a Deficiency or
for Refund of **Personal Income**

Article(s) 22 Taxes under
for the Year(s) 1961 of the Tax Law :

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that, pursuant to provision of the Tax Law (Section(s) 689), a hearing has been schedule to be held in the above-entitled matter at State Office Building, 80 Centre Street, New York, NY, Room 791 on Wednesday, June 4, 1969 at 9:30 a.m.

The petitioner (except as provided in Section 689(e) of the Tax Law) has the burden of proof and must establish by a preponderance of the evidence all facts necessary to show that there is no deficiency, or that a refund is due. Such proof may be made by testimony, or by documentary or other evidence. The petitioner will make a stronger case if his own testimony as to essential facts in issue is supported by other testimony or by documentary evidence.

Failure to appear at the scheduled hearing may result in a dismissal of the petition. Adjournment may be requested but will be granted only for good cause and only to such time and place as the State Tax Commission finds appropriate.

PETITIONER:

Wyndell A. & Hazel N. Rowe
204 West Hiawatha Trail
Mt. Prospect, Illinois
60057

cc Petitioner's Attorney or Representative:

Claude N. Hoke
15 Fairmount Boulevard
Garden City, New York 11530

DATED: Albany, New York
April 22 19__69

STATE TAX COMMISSION

By *Lawrence A. Sherman*
Hearing Officer

Law Bureau, Department of Taxation and Finance

Bureau
Department of Taxation and Finance

204 West Hiawatha Trail
Mt. Prospect, Illinois
7 May 1969

Mr. Lawrence A. Newman
State of New York
Department of Taxation & Finance
State Campus
Albany, New York 12226

Dear Sir:

I received the attached correspondence from your office dated April 22, 1969.

I am assuming your files are incomplete on this subject matter. In March of 1965, I received correspondence from your department which apparently was the second notification. I did not receive the prior one probably because it was not forwarded by the post office in Connecticut where I formerly lived. That correspondence dealt with this same subject matter and was signed by Mr. S. W. Knee. Subsequent to that I appointed a Mr. Claude N. Hoke of New York as my representative and made him my power of attorney.

On July 2, 1965, I received correspondence from Mr. David Simon of your department advising of a conference to be held in New York. Prior to that time I had written Mr. Hoke and given him the complete information which is detailed in the attached letter to him.

Subsequently, he met with Mr. Simon two or three times - the results of which satisfied him that my tax report and files were in order. I was advised by Mr. Hoke that the matter was closed and dropped.

When I received your attached notice, to say I was surprised was an understatement. I certainly have not retained any records for eight years dealing with this matter - particularly in view of the fact that the matter had been reviewed in 1965, closed and no correspondence or notification concerning the matter subsequent to that time.

To further complicate matters you copied Mr. Hoke and I received notice from his widow that he passed away in 1968. All of the records I indicate as having forwarded to him in 1965 were retained by him, and if they were not destroyed in the interim, no one has knowledge of their whereabouts.

Mr. Lawrence A. Newman

-2-

7 May 1969

As I previously mentioned, I do not believe your files indicate that this matter was reviewed in 1965, or the results of those reviews.

I will certainly appreciate your reconsideration of this matter and advice from you that it is closed. I'm sure you can appreciate my position since I have been living in the Chicago area since 1963. I have already undergone considerable expense and inconvenience attempting to satisfy the inquiry which was erroneous in the first place.

Respectfully yours,

W. A. Rowe



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

STATE TAX COMMISSION

JOSEPH H. MURPHY, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE CAMPUS
ALBANY, N. Y. 12226

TELEPHONE 457-2655, 6, 7

May 20, 1969

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Mr. Wyndell A. Rowe
204 West Hiawatha Trail
Mt. Prospect, Illinois 60057

Re: Wyndell A. Rowe and Haxel N. Rowe
Notice of Hearing
Article 22 Year 1961
June 4, 1969 9:30 A.M.

Dear Sir:

Upon receipt of your letter of May 7, 1969, I requested our Bureau of Law to review the history of your case.

I was advised that an informal conference was held before Mr. David Simon during 1965 in New York City.

Mr. Simon had recommended some reduction in the original assessment. These recomputations are being prepared by the Income Tax Bureau in anticipation of the scheduled hearing.

However, your representative would not agree to the proposed modified findings at that time, and as a matter of routine, the entire matter was referred for a formal hearing. The ensuing delay was caused by an overly crowded hearing calendar.

In these hearings, the taxpayer-petitioner has the burden of proof and must establish by a preponderance of the evidence all facts necessary to show that there is no deficiency. In the absence of documents or records, some forms of secondary evidence would be heard and considered.

If you require additional time to secure representation in your case, or desire a more convenient time to be scheduled, a reasonable postponement would be granted.

Please advise me of your decision at least one week prior to the scheduled hearing.

Very truly yours,

LAWRENCE A. NEWMAN
Hearing Officer

LAN/lh

204 West Hlawatha Trail
Mt. Prospect, Ill. 60057
23 May 1969

Mr. Lawrence A. Newman
Hearing Officer
State of New York
Department of Taxation & Finance
State Campus
Albany, New York 12226

Dear Mr. Newman:

I received your correspondence dated May 20, advising of a hearing June 4 in New York. I am at a loss to comprehend how this can continue or what is expected of me. Am I to go through the expense again of appointing a representative and power-of-attorney, or the expense of a trip from Chicago, appoint a lawyer, or just say "to hell with it", and let you take the action. I have and will continue to make every effort to get it resolved in a business like, logical manner, but it's becoming increasingly difficult.

I can appreciate that in the rush of business you cannot devote the time to study each case that crosses your desk. Perhaps if I list, in chronological order, the full details, it will be helpful:

1961 - State Income filed first quarter 1962.

1965 - State of New York apparently forwarded advise questioning my report to Connecticut. Was not received; I had been living in Chicago two years.

1965 - State of New York advised by letter that since I did not reply to inquiry, they were assessing \$713 tax.

1965 - April, I appointed Claude Hoke, power-of-attorney and my representative, and forwarded supporting documents which proved conclusively I had paid all due taxes in full.

1965 - July 2, advised by State of Conference to be held on subject July 22. Mr. Hoke attended, advised State apparently satisfied, but requested additional data and of a subsequent meeting 10 days later. I forwarded everything I had remaining, i.e., Federal returns, etc.

23 May 1969

1965 - September received bill from Mr. Hoke advising subsequent meeting was held, concluded satisfactorily and for me to consider the matter closed.

FOUR YEARS LAPSED AND I NEVER RECEIVED CORRESPONDENCE OR NOTIFICATION OF ANY KIND FROM THE STATE CONCERNING THE CONFERENCES, DECISIONS OR RULING.

1969 - April 22, 8 years after the tax year and 4 years after the last correspondence, I received notice - a new hearing date has been established.

1969 - May 7, I replied outlining the case history and had been advised Mr. Hoke, who had possession of my records, had passed away. Under the circumstances, I believe it unreasonable to expect retention of records that length of time.

1969 - May 20, I'm advised by your office a hearing has been set and "the taxpayer-petitioner has the burden of proof and must establish by a preponderance of the evidence all facts necessary to show that there is no deficiency."

In your correspondence you stated, as the apparent reason for the time lapse, that subsequent to my representative not agreeing to a modified proposal, "...the entire matter was referred for a formal hearing." (I was not advised) "The ensuing delay was caused by an overly crowded hearing calendar." For four years!!!!

I trust this outline puts this matter in the ludicrous perspective that exists and hopefully you will see fit to close the case. If for some reason you do not elect to do so, then I certainly request a postponement and rescheduling of a hearing. As sort of a reciprocal arrangement, let's say for another four years.

Respectfully yours,

W. A. Rowe

cc: Messrs: Joseph H. Murphy
A. Bruce Manley
Milton Koerner
Edward Rook

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
WYNDELL A. & HAZEL N. ROWE : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1961 :

The taxpayers, Wyndell A. and Hazel N. Rowe have filed a petition for a redetermination of a deficiency or for refund of Personal Income taxes under Article 22 of the Tax Law for the year 1961.

In response to a notice of formal hearing, the petitioner requested by letter that the matter be closed based upon the informal conferences held in July, August and September, 1965 between petitioner's representative, Mr. Claude N. Hoke (deceased) and Mr. David Simon, Conferee for the Income Tax Bureau. The report of the Conferee dated October 26, 1965 stated that the petitioner's representative "disagreed with the proposed adjustments based on substantiated working days out of New York State."

The petitioner's complete tax file has been submitted to the State Tax Commission for an examination and decision.

FINDINGS OF FACT:

1. The petitioners timely filed a New York State income tax non-resident return for the year 1961.

Mr. Wyndell A. Rowe's occupation was described as "sales manager." The return includes an allocation of income and expenses based on a formula of the fraction of 87 days worked in New York State over a total of 237 working days. The resulting fraction

was applied to a total salary of \$19276.81 and total itemized deductions after adjustments of \$3700.80. The amounts for New York were computed by the taxpayers to be salary of \$7075.71 and New York itemized deduction of \$1467.37.

2. On March 15, 1965, the Income Tax Bureau of the Department of Taxation and Finance issued a notice of deficiency, file numbered 1-5396608, for the year 1961 in the amount of \$607.51 plus statutory interest. The deficiency was based upon a disallowance of the allocation of salary income after the taxpayer had failed to answer an audit inquiring letter of December 10, 1964.

3. On May 7, 1965, the taxpayers filed a petition for redetermination of the deficiency for the year 1961. The petitioners mentioned in their petition that they had since moved from Norwalk, Connecticut to Mt. Prospect, Illinois.

4. The taxpayer's representative submitted to the Conferee, a copy of the taxpayer's travel schedule for the year 1961 to substantiate the taxpayer's allocation of salary income to New York State.

An analysis was made, and of the 150 days claimed as working days out of New York State, only 62 days were substantiated. The balance of 88 days consisted of working days where the location could not be substantiated or were actually spent at home for various reasons.

5. The petitioner has failed to prove that the said 88 days were spent without the State of New York, or that the taxpayer was required by the employer to be without the State on the said days, but the petitioner alleges that on the said days, he was engaged in services on behalf of his employer.

These additional days are therefore deemed to be working days attributable to activities within New York State.

6. The total number of working days stated on the taxpayer's return of 237 days is accepted as correct.

Based upon the facts contained in paragraph 4 above, the days worked without New York State are deemed to be 62 days, and the balance of 175 days are deemed to be days worked within New York State.

DECISION

A. The petitioner's allocation formula for computing the amount of salary for New York for the year 1961 is redetermined as follows:

Total working days	237
Days worked outside New York State	62
Days worked inside New York State	<u>175</u>

B. The notice of deficiency is hereby redetermined to conform to the following computation of the petitioner's New York State income tax liability for the year 1961:

175/237 X \$19276.81 - Salary earned within N.Y.	\$14233.93
Total Federal Income	<u>\$19276.81</u>
New York Deduction	<u>\$ 3700.80</u>
$\$14233.93/\$19276.81 \times \$3700.80$	2732.66
Balance	<u>\$11501.27</u>
Exemption	2400.00
New York Taxable Income	<u>\$ 9101.27</u>
Tax on above	\$ 387.09
Statutory credit claimed	25.00
New York tax	<u>\$ 362.09</u>
New York tax previously stated	<u>63.33</u>
ADDITIONAL PERSONAL INCOME TAX DUE	\$ 298.76

C. Interest at 6% per annum shall be added to the amount of additional personal income tax due, computed to the date of payment, or to within 30 days thereof.

D. The petition for redetermination is hereby granted in part,
as stated within paragraphs A, B and C above.

DATED: Albany, New York this 23rd day of October, 1969.

STATE TAX COMMISSION

NORMAN GALLMAN
PRESIDENT

A. BRUCE MANLEY
COMMISSIONER

MILTON KOERNER
COMMISSIONER



Wyndell A. Rowe, and
Hazel N. Rowe, his wife
204 W. Hiawatha Trail
Mt. Prospect, Ill. 60057

SS # 455 22 8488
SS #

AD 262681
ACCOUNT NUMBER
Apr 13 1970
DATE

CODE KEY
AA - AUDIT ADJUSTMENT
WH - WITHHOLDING TAX

TYPE	REFERENCE DATE	FILE NUMBER	YEAR OR QUARTER	PERSONAL INCOME	UNINCORPORATED BUSINESS	TOTAL
AA	3/15/65	1-5396608	1961	\$ 298.76		\$ 298.76
NOTICE AND DEMAND FOR PAYMENT OF INCOME TAX DUE NEW YORK STATE INCOME TAX BUREAU DIVISION 45 STATE CAMPUS ALBANY, N. Y. 12226				Total Tax	\$ 298.76	\$ 298.76
				Penalty		
				Interest		52.28
				Total	\$ 298.76	\$ 351.04
				Prev. Paid		
				Unpaid Bal.	\$ 298.76	\$ 351.04
						Add'l. Int. 91.05
		Total Due	\$ 442.09			

NOTICE TO TAXPAYER

PAY THIS AMOUNT

This is a notice and demand for payment of the Total Due shown on the line above. PLEASE RETURN ONE COPY OF THIS NOTICE with your remittance payable to the New York State Income Tax Bureau. Kindly use the enclosed envelope. Write the above account number on your remittance. If this notice is not paid within 10 days, additional interest will accrue. If you have paid this liability, please fill in the back of the notice and return it in the enclosed envelope.